

S.B.CIVIL WRIT PETITION NO.5730/1994

Balbir Singh & Ors.
V.
Board of Revenue & Ors.

Date of Order :: 7th March, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.L.Jain, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given by the petitioners to the judgment dated 26.10.1994 passed by the Board of Revenue for Rajasthan, Ajmer affirming the judgment dated 31.3.1990 passed by Additional Collector, Sriganganagar.

The facts in brief are that the proceedings under Chapter III-B of the Rajasthan Tenancy Act, 1955 were initiated against father of petitioners, Shri Jeeta Singh by Sub Divisional Officer, Raisinghnagar, however, same were dropped by holding that Shri Jeeta Singh was not having land in excess to the ceiling limits prescribed for agricultural land holding. The State Government by an order dated 29.11.1981 ordered for reopening of the ceiling case against Shri Jeeta Singh, accordingly the Additional Collector (Administration), Sriganganagar made requisite inquiry. The Additional Collector by an order dated 31.3.1990 held that Shri Jeeta Singh was having a family of two members, therefore, he was entitled to

retain 46.8 bighas of land and as such he was having 20.12 bighas land in excess to the ceiling limits prescribed to hold agricultural land.

Being aggrieved by judgment dated 31.3.1990 the present petitioners, who are legal representatives of Shri Jeeta Singh, preferred an appeal under Section 23(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973") before the Board of Revenue for Rajasthan, Ajmer. The Board of Revenue by judgment dated 26.10.1994 dismissed the appeal and affirmed the judgment dated 31.3.1990 passed by Additional Collector (Administration), Sriganganagar. The Board of Revenue while rejecting the appeal preferred by the petitioners held that Shri Kunda Singh, father of Shri Jeeta Singh was a Jagirdar and the land possessed by him was Jagir land. Being Jagir land the petitioners were having no right to retain the said land after application of Rajasthan Land Reforms and Resumption of Jagir Act, 1952. The Board of Revenue also affirmed the finding given by Additional Collector to the effect that the family of Shri Jeeta Singh was consisting of only two members.

Being aggrieved by judgment dated 26.10.1994 referred above the instant petition for writ is filed by the petitioners.

A reply to the writ petition has been filed on behalf of the respondents in general defending the judgments impugned.

Heard counsel for the parties.

While giving challenge to the judgment dated 26.10.1994 passed by Board of Revenue it is contended by learned counsel for the petitioners that Board of Revenue without any material available on record held that then land under cultivatory possession of Kunda Singh was a Jagir land.

I have examined the judgment impugned wherefrom it does not reveal as to how the land in question has been treated as Jagir Land. The definition of "Jagir Land" as given in Section 5(22) of the Rajasthan Tenancy Act, 1955 reads as under:-

"5(22)"Jagir land" shall mean land in any part of the State in which or in relation to which a jagirdar has rights in respect of revenue or land any other kind of revenue and shall include--

(a) a land held in the pre-reorganisation State of Rajasthan other than in the Sironj area on any of the tenures specified in the Second Schedule.

(b) land, if any, held in the abu area as Jagir as defined in clause (vi) of sub-

section (1) of section 2 of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 (Bombay Act, 39 of 1954),

(c) land, if any, held in the Ajmer area as an estate as defined in clause (v) of sub-sec. (1) of section 2 of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Ajmer Act III of 1955) that is to say, as an Istmarari estate or as Jagir, Bhum, Muafi or Guzara or by a minor Istmarardar or a non-sanadi Istmarardar, and,

(d) jagir land as defined in clause (vii) of sub-section (1) of section 2 of the Madhya Bharat Abolition of Jagirs Act, Samvat 2008 (Madhya Bharat : Act 28 of 1951), if any, held in the Sunel area;

(e) land or interest in land held by a land owner.”

From perusal of the definition above it is clear that a jagir land mean a land with regard to which a jagirdar has a right for revenue. The term “Jagir Land” is also defined under Rajasthan Land Reforms and Jagir Resumption Act, 1952. According to it a jagir land mean any land which or in relation to which a jagirdar has right in respect of land revenue or any other kind of revenue and includes any land held on any of the tenures specified in first schedule. There is nothing on record on basis of which it can be said that the land under the cultivatory possession of Shri Kunda Singh (grand father of the

petitioners) was Muafi land or Shri Kunda Singh was having right for revenue from the land concerned. Shri Kunda Singh could have been treated as jagirdar and the land in question be termed as a "Jagir land" only on having the ingredients as mentioned above. From the order impugned it does not reveal that any of the ingredient was available to prove the land in question as jagir land. As such the finding given by Board of Revenue on its face is bad in eye of law.

The Board of Revenue by judgment impugned also affirmed the finding given by Additional Collector that family of Late Shri Jeeta Singh was consisting of two members. It is not at all in dispute that all the petitioners are sons of Shri Jeeta Singh. The land being ancestral land, all the petitioners were having coparcenary rights in the land in question and, therefore, it cannot be said that the family of Shri Jeeta Singh was consisting of two members only. It is well settled that in an ancestral land all the coparceners have equal rights, therefore, the finding given by Additional Collector, affirmed by Board of Revenue to the effect that family of Shri Jeeta Singh was consisting of two members is also bad in eye of law. By treating all the children of Shri Jeeta Singh as members of family the total number of family members comes to eight as it was held by Sub Divisional Officer, Raisinghnagar while dropping the proceedings under Chapter III-B of Rajasthan Tenancy

Act, 1955. The land in question is measuring 67 bighas and number of family members is eight, therefore, I am having no doubt in holding that the land possessed by the petitioners is less than the ceiling limits prescribed for agricultural land holding.

The writ petition, for the reasons mentioned above, deserves acceptance. Accordingly the same is allowed. The judgment impugned passed by Additional Collector (Administration), Sriganganagar dated 31.3.1990 and the judgment dated 26.10.1994 passed by Board of Revenue for Rajasthan, Ajmer are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

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